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Filed : March 3, 2000

 21/23. The method of Claim 23, wherein the composition is prepared by a method comprising micronizing ascorbic acid powder in an oil.

22/43. The method of Claim 43, wherein said oil is derived from plant materials.

23/43. The method of Claim 43, wherein said oil comprises capric/caprylic triglycerides.

#### REMARKS

The Applicant acknowledges receipt of the September 4, 2001 Final Office Action. In the Office Action, the Examiner restated his earlier rejection of Claims 1-24 under 35 U.S.C. § 102(b), as being anticipated by PCT Publication WO 93/00015, to Kalamazoo Holdings, Inc. (hereinafter "Kalamazoo Holdings"), and his earlier rejection of Claims 1, 13-16, 18, 20, and 22 under 35 U.S.C. § 103(a), as being obvious over Kalamazoo Holdings. No other rejection was made.

During a telephonic interview between the undersigned and the Examiner on October 11, 2001, the Examiner indicated that he would re-consider the patentability of Claim 23, as amended herein, along with Claim 24 and newly added Claims 25-45, all of which depend from Claim 23. Applicant thanks the Examiner for so indicating, and respectfully requests that the Examiner reconsider and withdraw the rejections of Claims 23 and 24 in view of the above amendments and the following remarks, and bring the present application, in which Claims 23-45 are now pending, to issue.

#### The Present Amendments

Claims 1-22 have been canceled without prejudice to further prosecution, Claim 23 has been amended as to form but not as to scope, and new Claims 25-45 have been added. The following remarks address only presently pending Claims 23-45.

Specifically, Claim 23 has been amended so that it no longer makes explicit reference to Claim 1, now canceled without prejudice to further prosecution. The scope of Claim 23 has not been altered by the present amendment and, accordingly, the Examiner need not perform any new analysis of patentability or new search. Similarly, newly added Claims 25-45 do not contain new matter. Rather, these claims recite, respectively, specific limitations from Claims 2-22, now canceled without prejudice to further prosecution. In sum, then, no new matter has been added by the present amendment; explicit support for these amendments may be found in the claims as

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originally filed and at page 2, line 12. Cf. Eiselstein v. Frank, 52 F.3d 1035, 34 USPQ2d 1467 (Fed. Cir. 1995) (support for term “about” may be found in the use of a whole number).

The specific changes to the amended claims, along with the new claims, are shown on a separate Appendix provided pursuant to 37 C.F.R. § 121(c)(1)(ii). The Appendix is attached hereto and entitled **VERSION WITH MARKINGS TO SHOW CHANGES MADE**, which follows the signature page of this Amendment. On this set of pages, the insertions are underlined while the [deletions are indicated by brackets].

Rejections Under 35 U.S.C. § 102(b)

The Examiner has restated his earlier rejection of Claims 23 and 24 under 35 U.S.C. § 102(b), as being anticipated by Kalamazoo Holdings. In support of this rejection, the Examiner asserts that Kalamazoo Holdings “teaches the addition of micronized ascorbic acid to compositions for the purpose of protection from antioxidation in amounts of 0.001% or more by weight and later cites ranges of 5 to 50% by weight (see page 5, line 15 to page 11, line 3).” Applicant respectfully disagrees with this characterization of Kalamazoo Holdings, both generally and specifically with regard to the subject matter of Claims 23 and 24.

As noted in Applicant’s response to the initial Office Action, and as again pointed out by the undersigned to the Examiner during the October 11, 2001 telephonic interview, Kalamazoo Holdings does not disclose a method including the step of applying to the skin, a composition comprising greater than approximately 25% ascorbic acid. The only descriptions of high concentrations of “ascorbic acid” in Kalamazoo Holdings, refer to a pre-formed, milled ascorbic acid concentrate. See, e.g., page 7, line 32 (“between about 5% and 50% by weight”); page 28, line 23 (in Example 6, disclosing “26% w/w,” ascorbic acid); page 33, lines 12-13 (in an example entitled “Stabilization of Essential Oils and Cosmetics,” describing orange oil “dosed with 0.05% of the uAA [micronized ascorbic acid] of Example 6”). This concentrate is then substantially diluted into, for example, a cosmetic composition. Accordingly, as previously noted by Applicant, the cosmetic composition of Example 10 of Kalamazoo Holdings contains no more than about 0.013%, by weight, micronized ascorbic acid. In sum, then, Kalamazoo Holdings does not teach, much less include any suggestion or motivation to make, a method whereby a composition comprising greater than approximately 25% ascorbic acid is topically

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applied to the skin. Because Kalamazoo Holdings includes no such teaching, it can not be deemed to anticipate Claim 23 or a claim that depend therefrom.

Also, the Examiner is asked to note that while several of the then-pending claims stood rejected under 35 U.S.C. § 103(a), as being obvious over Kalamazoo Holdings, pending Claims 23 and 24 do not stand rejected under § 103(a). Accordingly, no rejection under § 103(a) is pending, and the only pending rejection, under § 102(b), is fully addressed above. In any event, as noted above, Kalamazoo Holdings does not render the subject matter of Claim 23 obvious.

### CONCLUSION

Applicant respectfully asserts that the above-captioned application, in which Claims 23-45 now remain pending, is fully in condition for allowance. The Applicants urge the Examiner to contact the undersigned if any questions remain as to the above-captioned application. Please charge any additional fees, including any fees for additional extension of time, or credit overpayment to Deposit Account No. 11-1410.

Respectfully submitted,  
KNOBBE, MARTENS, OLSON & BEAR, LLP

Dated: October 16, 2001

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**VERSION WITH MARKINGS TO SHOW CHANGES MADE**

**PENDING CLAIMS:**

1. **(Canceled)** A composition for topical use comprising greater than approximately 25% L-ascorbic acid, by weight, and a non-aqueous carrier, wherein said composition has a pH of greater than that of skin.
2. **(Canceled)** The composition of Claim 1, wherein said composition comprises greater than 25% micronized L-ascorbic acid by weight.
3. **(Canceled)** The composition of Claim 2, wherein said L-ascorbic acid has a mean particle size of no greater than approximately 5  $\mu\text{m}$ .
4. **(Canceled)** The composition of Claim 2, wherein said L-ascorbic acid has a mean particle size of no greater than approximately 2  $\mu\text{m}$ .
5. **(Canceled)** The composition of Claim 2, wherein said L-ascorbic acid has a mean particle size between approximately 0.01  $\mu\text{m}$  and 1  $\mu\text{m}$ .
6. **(Canceled)** The composition of Claim 1, wherein said composition comprises greater than 30% ascorbic acid.
7. **(Canceled)** The composition of Claim 1, wherein said composition comprises, by weight, more L-ascorbic acid than D-ascorbic acid.
8. **(Canceled)** The composition of Claim 1, wherein said composition comprises, by weight, more L-ascorbic acid than ascorbic acid derivatives.
9. **(Canceled)** The composition of Claim 1, wherein said composition is essentially free of D-ascorbic acid, and is essentially free of ascorbic acid derivatives.
10. **(Canceled)** The composition of Claim 1, wherein said composition has a pH of at least about 5.5.
11. **(Canceled)** The composition of Claim 1, wherein said composition has a pH of at least about 6.0.
12. **(Canceled)** The composition of Claim 1, wherein said composition has a pH of at least about 7.0.
13. **(Canceled)** The composition of Claim 1, wherein said composition further comprises an enzymatic exfoliant.

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14. **(Canceled)** The composition of Claim 1, wherein said enzymatic exfoliant comprises papain.

15. **(Canceled)** The composition of Claim 1, wherein said non-aqueous carrier comprises glycerin.

16. **(Canceled)** The composition of Claim 1, wherein said L-ascorbic acid is micronized in oil.

17. **(Canceled)** The composition of Claim 16, wherein said oil may be derived from plant materials.

18. **(Canceled)** The composition of Claim 16, wherein said oil comprises capric/caprylic triglycerides.

19. **(Canceled)** The composition of Claim 2, wherein said L-ascorbic acid is prepared by a wet micronization process.

20. **(Canceled)** A method for preparing a topical L-ascorbic acid composition, comprising micronizing ascorbic acid powder in an oil, wherein the resultant composition comprises greater than approximately 25% L-ascorbic acid, by weight.

21. **(Canceled)** The method of Claim 20, wherein said oil may be derived from plant materials.

22. **(Canceled)** The method of Claim 20, wherein said oil comprises capric/caprylic triglycerides.

23. **(Amended)** A method of providing one or more of the following treatments to a mammal in need of such treatment: UV protection, removal and prevention of wrinkles, or stimulating collagen production in a mammal, said method comprising,

identifying a mammal in need of such treatment, and

topically applying [the composition of Claim 1] to said mammal a composition comprising greater than approximately 25% L-ascorbic acid, by weight, and a non-aqueous carrier, wherein the composition has a pH of greater than that of said mammal's skin.

24. The method of Claim 23, wherein said mammal is a human.

25. **(New)** The method of Claim 23, wherein, wherein said composition comprises greater than 25% micronized L-ascorbic acid by weight.

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26. (New) The method of Claim 23, wherein said L-ascorbic acid has a mean particle size of no greater than approximately 5  $\mu\text{m}$ .

27. (New) The method of Claim 25, wherein said L-ascorbic acid has a mean particle size of no greater than approximately 2  $\mu\text{m}$ .

28. (New) The method of Claim 25, wherein said L-ascorbic acid has a mean particle size between approximately 0.01  $\mu\text{m}$  and 1  $\mu\text{m}$ .

29. (New) The method of Claim 23, wherein said composition comprises greater than 30% ascorbic acid.

30. (New) The method of Claim 23, wherein said composition comprises, by weight, more L-ascorbic acid than D-ascorbic acid.

31. (New) The method of Claim 23, wherein said composition comprises, by weight, more L-ascorbic acid than ascorbic acid derivatives.

32. (New) The method of Claim 23, wherein said composition is essentially free of D-ascorbic acid, and is essentially free of ascorbic acid derivatives.

33. (New) The method of Claim 23, wherein said composition has a pH of at least about 5.5.

34. (New) The method of Claim 23, wherein said composition has a pH of at least about 6.0.

35. (New) The method of Claim 23, wherein said composition has a pH of at least about 7.0.

36. (New) The method of Claim 23, wherein said composition further comprises an enzymatic exfoliant.

37. (New) The method of Claim 36, wherein said enzymatic exfoliant comprises papain.

38. (New) The method of Claim 23, wherein said non-aqueous carrier comprises glycerin.

39. (New) The method of Claim 23, wherein said L-ascorbic acid is micronized in oil.

40. (New) The method of Claim 39, wherein said oil may be derived from plant materials.

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41. (New) The method of Claim 39, wherein said oil comprises capric/caprylic triglycerides.

42. (New) The method of Claim 25, wherein said L-ascorbic acid is prepared by a wet micronization process.

43. (New) The method of Claim 23, wherein the composition is prepared by a method comprising micronizing ascorbic acid powder in an oil.

44. (New) The method of Claim 43, wherein said oil is derived from plant materials.

45. (New) The method of Claim 43, wherein said oil comprises capric/caprylic triglycerides.

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